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14 *Attorneys for Defendant*

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

17 D.H., by and through his mother, Janice
18 Hennessy-Waller; and John Doe, by and
19 through his guardian and next friend, Susan
20 Doe, on behalf of themselves and all others
21 similarly situated,

22 Plaintiffs,

23 vs.

24 Jami Snyder, Director of the Arizona Health
25 Care Cost Containment System, in her
26 official capacity,

27 Defendant.

Case No. 4:20-cv-00335-SHR

**DEFENDANT’S RESPONSE TO
PLAINTIFFS’ SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

(Assigned to the Honorable Scott H.
Rash)

28 Defendant Jami Snyder (“Defendant”) submits this response to Plaintiffs’
Supplemental Brief in Support of Motion for Preliminary Injunction (Doc. 62).

Prior to the February 5, 2021 oral argument on Plaintiffs’ Motion for Preliminary
Injunction, the parties had not briefed the issue of whether the specific claims Plaintiffs
have asserted in this case require the exhaustion of administrative remedies. Plaintiffs
correctly note that “the issue of administrative appeals and exhaustion of administrative

1 remedies was not previously raised by Defendant or otherwise briefed by the parties.”
2 (Doc. 58, p. 2)

3 As a general matter, federal courts typically require the exhaustion of
4 administrative remedies before a party files a federal lawsuit. *United Farm Workers v.*
5 *Ariz. Agric. Employment Relations Bd.*, 669 F.2d 1249, 1253 (9th Cir.1982) (“The
6 purpose of the exhaustion doctrine is to allow the administrative agency in question to
7 exercise its expertise over the subject matter and to permit the agency an opportunity to
8 correct any mistakes that may have occurred during the proceeding, thus avoiding
9 unnecessary or premature judicial intervention into the administrative process”); *Lloyd C.*
10 *Lockrem, Inc. v. United States*, 609 F.2d 940, 942 (9th Cir. 1979) (“Under normal
11 circumstances, a party must exhaust its remedies before it can obtain judicial review of an
12 agency decision”); *Buckingham v. Secy of U.S. Dep’t of Agr.*, 603 F.3d 1073, 1080 (9th
13 Cir. 2010) (“The APA [Administrative Procedure Act] requires plaintiffs to exhaust their
14 administrative remedies before bringing suit in federal court”).

15 Because the issue had not been briefed, the undersigned was not aware of the cases
16 creating an exception to the general rule and finding that exhaustion of administrative
17 remedies is not required before seeking injunctive relief in a 42 U.S.C. § 1983 action
18 under the Medicaid Act. Having reviewed that law, the undersigned counsel wishes to
19 correct the record and confirm that Defendant agrees with the argument made in Section I
20 of Plaintiffs’ Supplemental Brief. (Doc. 62) Nonetheless, AHCCCS’s administrative
21 appeal process, which includes the opportunity to request an evidentiary hearing, is
22 important and relevant to this case for other reasons, as explained in more detail below.

23 As Plaintiffs correctly point out in Section II of their Supplemental Brief, the
24 AHCCCS fair hearing process works in the following manner: First, a managed care plan
25 reviews an AHCCCS-enrolled member’s request for prior authorization of a particular
26 service. If the managed care plan denies a request for prior authorization, the enrollee has
27 the right to appeal the denial with the plan itself. If the plan upholds its initial decision to
28

1 deny coverage for a particular service, the AHCCCS-enrolled member then has the right
2 to request a fair hearing with the State. The Arizona Office of Administrative Hearings
3 conducts this fair hearing. After the evidentiary hearing, the Administrative Law Judge
4 issues a written recommendation to AHCCCS. Defendant may then accept, reject, or
5 modify the ALJ's decision (and her decision is then the final decision). Alternatively, if
6 Defendant does not accept, reject, or modify the ALJ's decision within the statutory time
7 period, the ALJ's decision is certified as the final decision. The AHCCCS-enrolled
8 member may either (a) request rehearing or review of the final decision, or (b) file a
9 petition for judicial review directly to the Arizona Superior Court.

10 There is no dispute that there is a fair hearing process with an evidentiary hearing
11 whereby AHCCCS generally has the opportunity to decide disputes as to whether or not a
12 particular service or procedure is medically necessary or experimental for an AHCCCS-
13 enrolled member. *See* 42 U.S.C. § 1396a(a)(3); 42 C.F.R. § 431.200, *et seq.*; 42 C.F.R. §
14 438.400, *et seq.* This is a federally-required state administrative hearing process that
15 allows an AHCCCS-enrolled member to present his/her medical background and
16 information through the administrative appeal process and allows AHCCCS to determine
17 whether a service or procedure is medically necessary and effective for the member and
18 his/her unique circumstances. With respect to these two Plaintiffs, at the February 5, 2021
19 oral argument, the Court asked whether AHCCCS has “a process where it could look at
20 these particular individuals and say, okay, in this unique situation, maybe male chest
21 reconstruction surgery is medically necessary or safe and effective because of these
22 unique circumstances.” (Transcript of February 5, 2021 Oral Argument, 43:23-44:4)
23 Here, for these two Plaintiffs, the outcome of that process is undetermined because
24 Plaintiffs’ “unique circumstances” are unknown at this time. This is because, (1) none of
25 Plaintiffs’ medical records have been produced in this case, and (2) there has never been a
26 final determination of medical necessity of this surgery for Plaintiffs that has been
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1 evaluated through the AHCCCS administrative review and fair hearing process.¹ But to
 2 be clear, if Plaintiffs' medical records, or the administrative appeal process, reveal that
 3 gender dysphoria is the only condition for which chest reconstruction surgery is
 4 recommended (and that appears to be the case here), that request will be denied based
 5 upon the exclusion found in A.A.C. R9-22-205(B)(4)(a).

6 Plaintiffs filed a proposed order with their motion for preliminary injunction. (Doc
 7 3-1 at p. 1) Plaintiffs' proposed order asks the Court to enter the following order:

8 IT IS FURTHER ORDERED THAT:

9 (1) Defendants shall be immediately enjoined from further enforcement of
 10 Ariz. Admin. Code R9-22-205(B)(4)(A), (sic) on the grounds that it violates the
 11 Medicaid Act's EPSDT and Comparability Requirements, Section 1557 of the
 Affordable Care Act, and the Equal Protection Clause of the United States
 Constitution.

12 (2) Arizona Healthcare Cost Containment System shall provide coverage for
 13 Plaintiffs' male chest reconstruction surgeries, consistent with all other
 requirements of federal law.²

14 During the parties' meet and confer process regarding supplemental briefing
 15 Plaintiffs took the position that: "quoting solely from the proposed order we submitted
 16 with Plaintiffs' Motion for Preliminary Injunction as a restatement of Plaintiffs'
 17 argument/position would still be misleading in light of our representations to the Court."³

18 Defendant is at a loss to understand how quoting Plaintiffs' proposed order could
 19 be misleading. During the meet and confer process, Defendant invited Plaintiffs to file an
 20 amended proposed order if Plaintiffs believed their existing proposed order was no longer
 21

22 _____
 23 ¹ With respect to this process, Plaintiff D.H. has alleged he only requested prior
 24 authorization with the managed care plan and appealed the denial of his surgery with the
 plan. (Doc. 1, ¶¶ 9, 87) Plaintiff John Doe has apparently never requested prior
 authorization in the first instance.

25 ² On February 26, 2021, in *Toomey v. State of Arizona*, Case No. CV-00035-RM-LAB, the
 26 Court declined to issue the requested preliminary injunction: "First, Plaintiff and the class
 27 members seek a mandatory injunction and have not met the heightened standard for such
 relief to issue. Second, the requested injunctive relief is identical to the ultimate relief
 Plaintiff and the class members seek in this litigation, and the Court finds it premature to
 grant such relief prior to discovery and summary judgment briefing." (Doc. 162, pp. 8-9).
 In this case, Plaintiffs' preliminary injunction motion should be denied for the same reasons.

28 ³ See, Exhibit A, Email from Asaf Orr to Kate King, et. al. February 26, 2021.

1 accurate or mischaracterized the relief Plaintiffs are now seeking. To date, no amended
2 proposed order has been filed.⁴

3 Thus, it is not “misleading” to state that Plaintiffs have asked the Court, in their
4 proposed order on file at Doc. 3-1 to order that “(2) Arizona Healthcare Cost Containment
5 System shall provide coverage for Plaintiffs’ male chest reconstruction surgeries,
6 consistent with all other requirements of federal law.” Defendant’s position is that the
7 Court cannot order coverage to be provided to Plaintiffs without a determination of
8 medical necessity in the first instance. Plaintiffs allege chest reconstruction surgery is
9 “medical necessary” for them in no fewer than 72 places in their briefs in support of their
10 Motion for Preliminary Injunction and supporting documentation. Indeed, the first
11 paragraph of the Motion for Preliminary Injunction states as a premise, “There is broad
12 consensus within the medical community that the surgery is a safe, effective, and
13 **medically necessary** treatment for many individuals with gender dysphoria, including
14 adolescents.” (Doc 3 at p. 2 (emphasis added)). For that reason, it seems beyond dispute
15 that a determination of medical necessity is a fundamental pre-requisite for the relief
16 sought in Plaintiffs’ preliminary injunction. Under Arizona law, medical necessity is a
17 requirement for AHCCCS coverage of any medical or behavioral health service. *See*
18 A.A.C. R9-22-202. For purposes of Plaintiffs’ preliminary injunction motion,
19 Defendant’s position is that Plaintiffs cannot establish medical necessity through
20 declarations from therapists (who cannot prescribe medication) and one pediatrician that
21 were likely prepared by Plaintiffs’ counsel. Such a decision requires a fully-developed
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24
25 ⁴During the meet and confer process, Plaintiffs’ counsel referred to oral argument testimony
26 wherein Mr. Orr stated: “Plaintiffs are here today, Your Honor, seeking an opportunity to
27 demonstrate the medical necessity of male chest reconstruction surgery and are asking the
28 Court to enjoin enforcement of that exclusion as to D.H. and John Doe so they can
demonstrate to the managed care organizations that this procedure is, in fact, medically
necessary for them.” (Feb. 5, 2021 Oral Argument Transcript, at 9:23-10:5) Although
Plaintiffs indicated at oral argument they plan to demonstrate medical necessity to the
managed care organizations, Plaintiffs have not amended their proposed order.

1 record and Plaintiffs have refused to provide any information to show that male chest
2 reconstruction surgery is medically necessary and effective for them.⁵

3 In their Supplemental Brief, Plaintiffs argue “[t]he question presented is a purely
4 legal one...” (Doc. 62 at 4) and they contend that “as long as the Challenged Exclusion
5 remains in effect, requiring Plaintiffs to exhaust this procedure would force Plaintiffs to
6 pursue what would be a futile procedure.” (*Id.* at 6) It is true that pursuit of the AHCCCS
7 process may be futile,⁶ but there are two problems with the argument that the Court can
8 decide this case exclusively as a matter of law.

9 First, the Court cannot decide cases in a vacuum. To determine that the Challenged
10 Exclusion is contrary to the Medicaid Act, Affordable Care Act, or the Equal Protection
11 Clause, the Court must first decide that the Challenged Exclusion unlawfully denies
12 medically necessary care to Plaintiffs – here, D.H. and John Doe – because the law
13 requires a plaintiff to have suffered an “injury in fact” that is “concrete and particularized”
14 and “not conjectural or hypothetical.” This concept was succinctly stated by the Supreme
15 Court in *Lujan v. Defenders of Wildlife*:

16 Over the years, our cases have established that the irreducible constitutional
17 minimum of standing contains three elements. First, the plaintiff must have
18 suffered an “injury in fact”—an invasion of a legally protected interest which is (a)
19 concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or
20 ‘hypothetical.’” Second, there must be a causal connection between the injury and
the conduct complained of—the injury has to be “fairly ... trace[able] to the
challenged action of the defendant, and not ... th[e] result [of] the independent

21 ⁵ In response to Defendant’s discovery, Plaintiffs refused to identify or produce any studies
22 that identify the long-term health benefits of male chest reconstruction surgery for
23 individuals with gender dysphoria under the age of 21. See, Exhibit B, Plaintiffs’ Responses
24 and Objections to Defendant’s First Set of Interrogatories, No. 1; Exhibit C, Plaintiffs’
25 Responses and Objections to Defendant’s First Set of Requests for Production, No. 1.
Plaintiffs also refused to admit or deny that “there are no studies that identify the long-term
26 health benefits of male chest reconstruction surgery for individuals under the age of 21 with
27 gender dysphoria.” Exhibit D, Plaintiffs’ Responses and Objections to Defendant’s First
28 Set of Requests for Admission, No. 5.

⁶ Defendant *still* does not have any medical records that would provide more detailed
information about Plaintiffs’ medical conditions and Plaintiffs failed to produce any
medical records (or any other documents for that matter) in response to Defendant’s
discovery. Instead, Plaintiffs *promised* to produce a limited set of “medical records related
to the Plaintiffs’ treatment for gender dysphoria to the extent in their possession, custody or
control.” (Exhibit C, No. 2).

1 action of some third party not before the court.” Third, it must be “likely,” as
2 opposed to merely “speculative,” that the injury will be “redressed by a favorable
3 decision.”

4 The party invoking federal jurisdiction bears the burden of establishing
5 these elements. Since they are not mere pleading requirements but rather an
6 indispensable part of the plaintiff's case, each element must be supported in the
7 same way as any other matter on which the plaintiff bears the burden of proof, i.e.,
8 with the manner and degree of evidence required at the successive stages of the
9 litigation.

10 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136-37 (1992)
11 (internal citations omitted).

12 Second, as Defendant has demonstrated, there is simply insufficient evidence
13 before the Court to make a determination of medical necessity for D.H. and John Doe.
14 The value of an irreversible surgery in treating gender dysphoria in minors – and these
15 two Plaintiffs in particular - is legitimately questioned by the evidence Defendant has
16 submitted. Plaintiffs have failed their burden to demonstrate that male chest
17 reconstruction surgery is medically necessary and effective for D.H., John Doe - or any
18 other person under age 21. The record before this Court currently lacks the evidence that
19 would be produced through the AHCCCS fair hearing process, and the Plaintiffs' medical
20 records. On the current record before this Court, there is simply insufficient evidence to
21 support a finding that chest reconstruction surgery is medically necessary and effective for
22 Plaintiffs.

23 RESPECTFULLY SUBMITTED this 4th day of March, 2021.

24 **BURNSBARTON PLC**

25 By /s/ David T Barton

26 David T. Barton
27 Kathryn Hackett King

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CERTIFICATE OF SERVICE

I hereby certifies that on March 4, 2021, I electronically transmitted the foregoing document, using the ECF System for filing and transmittal of a Notice of Electronic Filing and to ECF registrants and e-mailed a copy of the foregoing to the following:

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s/Carolyn Galbreath

EXHIBIT A

From: Asaf Orr AOrr@nclrights.org
Subject: Following up on last week's conversation
Date: February 26, 2021 at 10:27 AM
To: Kate King kate@burnsbarton.com, David Barton david@burnsbarton.com
Cc: Ray, Brent bray@kslaw.com, Chinsky, Andrew achinsky@kslaw.com, Daniel Barr dbarr@perkinscoie.com, JHowe JHowe@perkinscoie.com, Catherine McKee mckee@healthlaw.org, coursolle coursolle@healthlaw.org

Hi Kate and David,

I write to follow up on our conversation last Friday. We appreciate your intention to quote from our filings and the oral argument transcript to capture Plaintiffs' arguments regarding the subject of the supplemental brief—administrative exhaustion and the futility exception. That should resolve the concerns that we raised in our e-mail exchange last week. We would like to clarify, however, that quoting solely from the proposed order we submitted with Plaintiffs' Motion for Preliminary Injunction as a restatement of Plaintiffs' argument/position would still be misleading in light of our representations to the Court. Thus, to the extent that you quote from the proposed order, we ask that your supplemental brief include the necessary context to avoid any misrepresentation.

Thank you in advance for your time and attention to this matter.

Very truly yours,

Asaf

Asaf Orr, Esq. | Senior Staff Attorney & Transgender Youth Project Director

(Pronouns: He, him)

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Feminist Founded, Advocates for All

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12 (Additional Counsel on Signature Page)

13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 D.H., by and through his mother, Janice)
17 Hennessy-Waller; and John Doe, by his)
18 guardian and next friend, Susan Doe, on)
behalf of themselves and all others)
similarly situated,)

19 Plaintiffs,)

20 vs.)

21 Jami Snyder, Director of the Arizona)
22 Health Care Cost Containment System,)
in her official capacity,)

23 Defendant.)
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26
27
28

No. 4:20-cv-335-SHR

**PLAINTIFFS' RESPONSES AND
OBJECTIONS TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES**

1 Plaintiffs D.H. and John Doe (“Plaintiffs”), by and through their attorneys and
2 pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, hereby object and
3 respond to Defendant’s First Set of Interrogatories (“Interrogatories”) as follows. Plaintiffs
4 respond to these Interrogatories based on their knowledge as of the date below and after a
5 reasonable inquiry. Plaintiffs reserve the right to supplement and amend their responses.
6 Each response is offered on behalf of both Plaintiffs D.H. and John Doe.

7 **GENERAL OBJECTIONS**

8 1. Plaintiffs object to each Interrogatory to the extent that it seeks to impose
9 obligations upon Plaintiffs beyond those permitted by the Federal Rules of Civil Procedure
10 and the Local Rules of the U.S. District Court for the District of Arizona.

11 2. Plaintiffs object to each Interrogatory to the extent that it asks Plaintiffs to
12 provide information which is not in their possession, custody, or control. Specifically,
13 several Interrogatories seek broad information regarding the treatment of gender dysphoria.
14 These Interrogatories are properly the subject of expert discovery, not Interrogatories
15 directed to the named Plaintiffs.

16 3. Plaintiffs object to each to Interrogatory to the extent it seeks premature
17 expert discovery. As Defendant knows, the Court has not yet issued a scheduling order on
18 discovery. In the parties’ Rule 26(f) report, Plaintiffs suggested the parties exchange expert
19 disclosures and reports on May 27, 2021. The Court has not yet issued a ruling setting these
20 deadlines. In any event, several of these Interrogatories seek expert information, and issuing
21 requests for this information outside the course of expert discovery is not the correct
22 procedural mechanism.

23 4. Plaintiffs object to the Interrogatories to the extent that they contain words
24 and phrases that are vague, ambiguous, confusing, overly broad, and/or undefined, and
25 therefore are difficult or impossible to understand.

26 5. Plaintiffs object to the Interrogatories to the extent that they are based on facts
27 not in evidence or facts that are otherwise incorrect.
28

1 6. Plaintiffs incorporate the foregoing General Objections into their response to
2 each Interrogatory below, regardless of whether a particular response may repeat a
3 particular General Objection.

4 **INTERROGATORY NO. 1:**

5 Please identify by name, date and author, any peer-reviewed studies that identify the
6 long-term health benefits of male chest reconstruction surgery for individuals with gender
7 dysphoria under the age of 21.

8 **RESPONSE TO INTERROGATORY NO. 1:**

9 Plaintiffs object to this Interrogatory because it seeks information which is not in
10 Plaintiffs' possession, custody, or control. Because this Interrogatory asks for information
11 about peer-reviewed studies on the long-term health benefits of male chest reconstruction
12 surgery, it is properly the subject of expert discovery, not an Interrogatory to a party under
13 Rule 33. Plaintiffs also object to this Interrogatory because the phrase "long-term health
14 benefits" is vague, ambiguous, and capable of multiple interpretations. Plaintiffs further
15 object as such peer-reviewed studies are publicly available, and therefore just as easily
16 accessed by Defendant as the Plaintiffs.

17 Plaintiffs stand on their objections.

18 **INTERROGATORY NO. 2:**

19 Produce all scientific studies, research, and clinical evidence that support the
20 allegations and conclusions found in paragraphs 38, 39, and 40 of the Complaint.

21 **RESPONSE TO INTERROGATORY NO. 2:**

22 Plaintiffs object to this Interrogatory because it calls for the production of documents
23 and is therefore incapable of being "answered separately and fully in writing under oath."
24 *See* Fed. R. Civ. P. 33(b)(3). Plaintiffs further object to the extent such scientific studies,
25 research, and clinical evidence are publicly available, and therefore just as easily accessed
26 by Defendant as the Plaintiffs.

27 Plaintiffs stand on their objections.

1 **INTERROGATORY NO. 3:**

2 Please describe the criteria that should be applied to determine that male chest
3 reconstruction surgery is medically necessary for transgender males under the age of 21
4 who suffer from gender dysphoria.

5 **RESPONSE TO INTERROGATORY NO. 3:**

6 Plaintiffs object to this Interrogatory because it seeks information that is only
7 minimally relevant to any party's claim or defense and is therefore not proportional to the
8 needs of this Lawsuit. Plaintiffs ask the Court to enjoin Defendant from enforcing the
9 Challenged Exclusion because the Exclusion violates federal law by preventing Plaintiffs
10 and similarly situated individuals from having the opportunity to demonstrate to AHCCCS
11 that male chest reconstruction is medically necessary for the treatment of their gender
12 dysphoria.

13 Additionally, because this Interrogatory asks for information about the criteria for
14 determining whether male chest reconstruction surgery is medically necessary for certain
15 individuals, to the extent it seeks relevant information at all, it is properly the subject of
16 expert discovery, not an Interrogatory to a party under Rule 33. Plaintiffs further object to
17 this Interrogatory for that reason.

18 Subject to and without waiving their objections, Plaintiffs refer Defendant to
19 paragraphs 30 through 33 of their Complaint (Dkt. 1), which describe the standards of care
20 for the treatment of gender dysphoria, including the use of medically necessary surgical
21 treatment: the World Professional Association for Transgender Health ("WPATH")
22 *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming*
23 *People and Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An*
24 *Endocrine Society Clinical Practice Guideline*. Plaintiffs otherwise stand on their
25 objections.

1 **INTERROGATORY NO. 4:**

2 Please describe all efforts made by Plaintiff John Doe and Plaintiff D.H. to obtain
3 approval of coverage for the male chest reconstruction surgery they seek by way of this
4 Lawsuit.

5 **RESPONSE TO INTERROGATORY NO. 4:**

6 Plaintiffs object to this Interrogatory because it seeks information that is neither
7 relevant to any party's claim or defense nor proportional to the needs of this Lawsuit.
8 Plaintiffs' claims do not require administrative exhaustion, and even if they did, the futility
9 exception to the administrative exhaustion requirement would apply to the particular
10 circumstances of this Lawsuit and the Challenged Exclusion. *See generally* Dkt. 58-1. Any
11 "efforts made by Plaintiff John Doe and Plaintiff D.H. to obtain approval of coverage for
12 the male chest reconstruction surgery they seek" are therefore irrelevant to the central legal
13 issues in the Lawsuit: whether the Challenged Exclusion violates federal law or the
14 Constitution. Plaintiffs also object to this Interrogatory because the phrase "all efforts ... to
15 obtain approval of coverage for the male chest reconstruction surgery they seek" is vague,
16 ambiguous, and capable of multiple interpretations.

17 Subject to and without waiving their objections, Plaintiffs refer Defendant to
18 paragraphs 75 through 87 and 96 through 103 of their Complaint (Dkt. 1), which
19 respectively describe the efforts of Plaintiffs D.H. and John Doe to seek treatment for their
20 gender dysphoria. Plaintiffs sought such treatment believing that AHCCCS would cover
21 healthcare services and treatments in accordance with its legal obligations under federal
22 law, including coverage for the medically necessary surgical care they needed. Plaintiffs
23 only later learned that the Challenged Exclusion completely bars the possibility of their
24 obtaining coverage for male chest reconstruction surgery regardless of whether that surgery
25 was medically necessary. Plaintiffs otherwise stand on their objections.

1 **INTERROGATORY NO. 5:**

2 Please describe all efforts made by the National Center for Lesbian Rights and/or
3 National Health Law Program to obtain a legislative or administrative change to the
4 Challenged Exception before initiating the current Lawsuit.

5 **RESPONSE TO INTERROGATORY NO. 5:**

6 Plaintiffs object to this Interrogatory because it seeks information that is neither
7 relevant to any party's claim or defense nor proportional to the needs of this Lawsuit. As an
8 initial matter, neither the National Center for Lesbian Rights ("NLCR") nor the National
9 Health Law Program ("NHeLP") is a party to the Lawsuit. *See* Dkt. 1; *see also* Fed. R. Civ.
10 P. 33(a) (allowing a party to serve interrogatories "on any other party"); *id.* 33(b)(1)(A)
11 (directing that interrogatories be answered "by the party to whom they are directed").
12 Additionally, Plaintiffs are aware of no substantive or procedural rule that requires them or
13 their counsel to seek "to obtain a legislative or administrative change to" an enforced
14 government policy before challenging the legality of that policy (*i.e.*, the Challenged
15 Exclusion) under federal law or the Constitution. Accordingly, the information sought by
16 this Interrogatory is irrelevant to the Lawsuit. Plaintiffs also object to this Interrogatory
17 because the phrase "all efforts ... to obtain a legislative or administrative change to the
18 Challenged Exception [sic]" is vague, ambiguous, and capable of multiple interpretations.

19 Plaintiffs stand on their objections.

20 **INTERROGATORY NO. 6:**

21 Please describe all efforts made by the National Center for Lesbian Rights and/or
22 National Health Law Program to obtain a legislative or administrative change to the
23 Medicaid Act as it pertains to gender reassignment surgeries before initiating the current
24 Lawsuit.

25 **RESPONSE TO INTERROGATORY NO. 6:**

26 Plaintiffs object to this Interrogatory because it seeks information that is neither
27 relevant to any party's claim or defense nor proportional to the needs of this Lawsuit. As an
28 initial matter, neither NCLR nor NHeLP is a party to the Lawsuit. *See* Dkt. 1; *see also* Fed.

1 R. Civ. P. 33(a) (allowing a party to serve interrogatories “on any other party”); *id.*
2 33(b)(1)(A) (directing that interrogatories be answered “by the party to whom they are
3 directed”). Additionally, Plaintiffs’ do not seek “to obtain a legislative or administrative
4 change to the Medicaid Act as it pertains to gender reassignment surgeries” through their
5 Medicaid Act claims. Instead, Plaintiffs seek a declaration that the Challenged Exclusion
6 violates the Medicaid Act. Accordingly, the information sought by this Interrogatory is
7 irrelevant to the Lawsuit. Plaintiffs also object to this Interrogatory because the phrase “all
8 efforts ... to obtain a legislative or administrative change to the Medicaid Act as it pertains
9 to gender reassignment surgeries” is vague, ambiguous, and capable of multiple
10 interpretations.

11 Plaintiffs stand on their objections.

12 **INTERROGATORY NO. 7:**

13 If You provided anything other than an unqualified denial to Requests for Admission
14 15, 16, and 17, please, 1) provide the basis for Your denial; 2) identify the individual(s)
15 who applied for an exception or appealed a determination; and 3) provide the date of such
16 application or appeal.

17 **RESPONSE TO INTERROGATORY NO. 7:**

18 Plaintiffs hereby incorporate their objections to Defendant’s Requests for Admission
19 Nos. 15, 16, and 17. Plaintiffs also object to this Interrogatory to the extent that it seeks
20 information protected by (i) the attorney-client privilege, (ii) the work product doctrine,
21 and/or (iii) any other applicable privilege or protection.

22 Subject to and without waiving their objections, Plaintiffs hereby incorporate their
23 response to Interrogatory No. 4.

24 Plaintiffs otherwise stand on their objections.

25
26 Dated: February 24, 2021

Respectfully submitted,

27
28 /s/ Brent P. Ray
Brent P. Ray*

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CERTIFICATE OF SERVICE

I hereby that on February 24, 2021, I caused a copy of the foregoing Plaintiffs’ Responses and Objections to Defendant’s First Set of Interrogatories to be served on the following counsel via electronic mail:

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11 *Counsel for Plaintiffs and the Class*
12 (Additional Counsel on Signature Page)

13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 D.H., by and through his mother, Janice)
17 Hennessy-Waller; and John Doe, by his)
18 guardian and next friend, Susan Doe, on)
19 behalf of themselves and all others)
20 similarly situated,)
21 Plaintiffs,)
22 vs.)
23 Jami Snyder, Director of the Arizona)
Health Care Cost Containment System,)
in her official capacity,)
24 Defendant.)

No. 4:20-cv-335-SHR
**PLAINTIFFS' RESPONSES AND
OBJECTIONS TO
DEFENDANT'S FIRST SET OF
REQUESTS FOR PRODUCTION**

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1 Plaintiffs D.H. and John Doe (“Plaintiffs”), by and through their attorneys and
2 pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and other applicable
3 laws, hereby object and respond to Defendant’s Requests for Production.

4 Plaintiffs submit these objections and responses (each a “Response”) without
5 conceding the relevancy or materiality of the subject matter of any Request for Production
6 (each a “Request”). These objections and responses are without Plaintiffs’ right to object to
7 the relevance, admissibility, or use of any information provided in these responses in any
8 subsequent proceeding, hearing, or trial. Plaintiffs respond to these Requests based on their
9 knowledge as of the date below and after a reasonable inquiry. Plaintiffs reserve the right
10 to supplement and amend its Responses. Each Response is offered on behalf of both
11 Plaintiffs D.H. and John Doe, except where specifically noted.

12 **GENERAL OBJECTIONS**

13 1. Plaintiffs object to each Request to the extent that they seek to impose
14 obligations upon Plaintiffs beyond those permitted by the Federal Rules of Civil Procedure
15 and Local Rules of the U.S. District Court for the District of Arizona.

16 2. Plaintiffs object to the Requests to the extent that they ask Plaintiffs to
17 produce information which is not in their possession, custody, or control. Specifically, many
18 of these Requests seek documents regarding the treatment of gender dysphoria or legal
19 conclusions. Such Requests are properly the subject of expert discovery or motion practice,
20 not Requests directed to the named Plaintiffs.

21 3. Plaintiffs object to these Requests as premature expert discovery. As
22 Defendants well know, the Court has not yet issued a scheduling order on discovery. In the
23 parties’ Rule 26(f) report, Plaintiffs suggested the parties exchange expert disclosures and
24 reports on May 27, 2021. The Court has not yet issued a ruling setting these deadlines. In
25 any event, the majority of these Requests seek expert information, and issuing requests for
26 this information outside the course of expert discovery is not the correct procedural
27 mechanism.

1 4. Plaintiffs object to the Requests to the extent that they contain words and
2 phrases that are vague, ambiguous, confusing, overly broad, and/or undefined, and therefore
3 are difficult or impossible to understand. Where a Request contains such objectionable
4 words and phrases, Plaintiffs have properly denied that Request.

5 5. Plaintiffs object to the Requests to the extent that they are based on facts not
6 in evidence or facts that are otherwise incorrect.

7 6. Plaintiffs incorporate the foregoing General Objections into the Responses
8 below, regardless of whether a particular Response may repeat a particular General
9 Objection.

10 **REQUEST FOR PRODUCTION NO. 1:**

11 Please produce copies of all scientific studies, research, and clinical evidence that
12 identify the long-term health benefits of male chest reconstruction surgery for individuals
13 with gender dysphoria under the age of 21.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

15 Plaintiffs object to this Request because it asks Plaintiffs to produce information
16 which is not in their possession, custody, or control. This Request is properly the subject
17 of expert discovery, not a Request for Production under Rule 34, as it seeks scientific
18 documents regarding the treatment of gender dysphoria. The Court has not yet issued a
19 scheduling order on discovery. In the parties' Rule 26(f) report, Plaintiffs suggested the
20 parties exchange expert disclosures and reports on May 27, 2021. The Court has not yet
21 issued an order setting these deadlines. Requests for expert information outside the course
22 of expert discovery is not the correct procedural mechanism.

23 **REQUEST FOR PRODUCTION NO. 2:**

24 Please produce the complete medical records for Plaintiff John Doe and Plaintiff
25 D.H.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

27 Plaintiffs will produce their medical records related to the Plaintiffs' treatment for
28 gender dysphoria to the extent in their possession, custody or control.

1 **REQUEST FOR PRODUCTION NO. 3:**

2 Please produce all documents that support the assertion of Dr. Cronyn that El Rio
3 Health Center is treating more than 40 transgender boys who receive their health insurance
4 through AHCCCS and need male chest reconstruction surgery. See Cronyn Declaration at
5 ¶ 10. In producing these documents, please replace any personally identifying information
6 with AHCCCS member identification numbers that allow the information to be verified
7 while protecting patient privacy and mark the document “confidential” pursuant to the
8 protective order in place in this lawsuit.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

10 Plaintiffs object to this Request because it asks Plaintiffs to produce information
11 which is not in their possession, custody, or control. This Request is properly the subject
12 of expert or third-party discovery, not a Request for Production under Rule 34 directed to
13 Plaintiffs. This Request seeks information that is clearly—by the terms of the Request
14 itself—in the possession of Dr. Cronyn, not Plaintiffs.

15 **REQUEST FOR PRODUCTION NO. 4:**

16 Please produce a transcript of the talk “Creating a Primary Care Medical Home for
17 Transgender Youth.” See Cronyn Declaration at ¶ 12.

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

19 Plaintiffs object to this Request because it asks Plaintiffs to produce information
20 which is not in their possession, custody, or control. This Request is properly the subject
21 of expert or third-party discovery, not a Request for Production under Rule 34 directed to
22 Plaintiffs. This Request seeks information that is clearly—by the terms of the Request
23 itself—in the possession of Dr. Cronyn, not Plaintiffs.

24 **REQUEST FOR PRODUCTION NO. 5:**

25 Please produce all generally accepted scientific guidelines, research, or publications
26 that describe the criteria that should be applied to determine that male chest reconstruction
27 surgery is medically necessary for transgender males under the age of 21 who suffer from
28 gender dysphoria.

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

2 Plaintiffs object to this Request because it asks Plaintiffs to produce information
3 which is not in their possession, custody, or control. This Request is properly the subject
4 of expert discovery, not a Request for Production under Rule 34, as it seeks scientific
5 documents regarding the treatment of gender dysphoria. The Court has not yet issued a
6 scheduling order on discovery. In the parties' Rule 26(f) report, Plaintiffs suggested the
7 parties exchange expert disclosures and reports on May 27, 2021. The Court has not yet
8 issued an order setting these deadlines. Requests for expert information outside the course
9 of expert discovery is not the correct procedural mechanism.

10 **REQUEST FOR PRODUCTION NO. 6:**

11 Please produce any non-privileged communications Plaintiffs and/or their guardians
12 have had with the National Center for Lesbian Rights and/or National Health Law Program.

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

14 Plaintiffs object to this Request because it seeks information that is not relevant to
15 any party's claim or defense, not remotely likely to lead to the discovery of relevant
16 information, and it is not proportional to the needs of the case. Plaintiffs object to this
17 request because it is overly broad and because it is vague and ambiguous.

18 Subject to and notwithstanding these objections, Plaintiffs respond as follows: After
19 a diligent search and reasonable inquiry, Plaintiffs confirm that no such documents exist.

20 **REQUEST FOR PRODUCTION NO. 7:**

21 Please produce all documents reflecting the budget the National Center for Lesbian
22 Rights and/or National Health Law Program have set aside to advance its agenda on
23 transgender interests.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

25 Plaintiffs object to this Request because it asks Plaintiffs to produce information
26 which is not in their possession, custody, or control. Plaintiffs further object to this Request
27 because it seeks information that is not relevant to any party's claim or defense, not remotely
28 likely to lead to the discovery of relevant information, and it is not proportional to the needs

1 of the case. Plaintiffs also object to this request because it is overly broad and because it is
2 vague and ambiguous. Plaintiffs object specifically to the phrase “budget... set aside to
3 advance its agenda on transgender interests” as unintelligible as phrased.

4 **REQUEST FOR PRODUCTION NO. 8:**

5 Please produce any policy statements, letters, or documents by Plaintiffs, their
6 guardians, the National Center for Lesbian Rights, and/or the National Health Law Program
7 referencing the goals of this Lawsuit.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

9 Plaintiffs object to this Request because it seeks information that is not relevant to
10 any party’s claim or defense, not remotely likely to lead to the discovery of relevant
11 information, and it is not proportional to the needs of the case. Plaintiffs object to this
12 request because it is overly broad and because it is vague and ambiguous. Plaintiffs object
13 specifically to the phrase “policy statements, letters, or documents... referencing the goals
14 of this Lawsuit” as unintelligible as phrased.

15 **REQUEST FOR PRODUCTION NO. 9:**

16 Please produce any studies or reports that support your contention that “Transgender
17 people ... experience disproportionately high rates of harassment and discrimination in all
18 aspects of their lives” and therefore “would be reluctant join a lawsuit that might publicize
19 their circumstances.” (Motion for Class Certification at p. 4)

20 **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

21 Plaintiffs object to this Request because it asks Plaintiffs to produce information
22 which is not in their possession, custody, or control. This Request is properly the subject
23 of expert discovery, not a Request for Production under Rule 34, as it seeks scientific
24 documents regarding the treatment of gender dysphoria and the experiences of transgender
25 people. The Court has not yet issued a scheduling order on discovery. In the parties’ Rule
26 26(f) report, Plaintiffs suggested the parties exchange expert disclosures and reports on May
27 27, 2021. The Court has not yet issued an order setting these deadlines. Requests for expert
28 information outside the course of expert discovery is not the correct procedural mechanism.

1 Subject to and notwithstanding these objections, Plaintiffs respond as follows:
2 Plaintiffs have already provided Defendants with documents and information responsive to
3 this request: Plaintiff John Doe’s Motion to Proceed Under a Pseudonym contains reference
4 to several studies in support of this contention, *see* Dkt. 2. Likewise, Plaintiffs’ declarations
5 in support of their Motion for Preliminary Injunctions, as well as the declarations submitted
6 by their providers and experts in support of that motion, support this contention, *see* Dkts.
7 4, 5, 25-1, 25-2, 32.

8 **REQUEST FOR PRODUCTION NO. 10:**

9 Please produce any documents that you relied upon, referenced, or referred to in
10 preparing your answers to Defendant’s First Set of Requests for Admission, Interrogatories
11 and Requests for Production.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

13 Plaintiffs object to this Request because it seeks information that is not relevant to
14 any party’s claim or defense, not remotely likely to lead to the discovery of relevant
15 information, and it is not proportional to the needs of the case.

16 Subject to and notwithstanding these objections, Plaintiffs respond as follows: Other
17 than Plaintiffs’ medical records related to the treatment of their gender dysphoria, all
18 documents referenced in Plaintiffs’ answers to Defendant’s First Set of Requests for
19 Admission, Interrogatories and Requests for Production have already been made available
20 to Defendant.

21
22 Dated: February 24, 2021

Respectfully submitted,

23
24 /s/ Brent P. Ray

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CERTIFICATE OF SERVICE

I certifies that on February 24, 2021, I caused a copy of the foregoing Plaintiff's Responses and Objections to Defendant's First Set of Requests for Production to be served by email on all counsel of record.

/s/ Andrew Chinsky

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11 *Counsel for Plaintiffs and the Class*
12 (Additional Counsel on Signature Page)

13
14 **UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 D.H., by and through his mother, Janice)
17 Hennessy-Waller; and John Doe, by his)
guardian and next friend, Susan Doe, on)
18 behalf of themselves and all others)
similarly situated,)
19 Plaintiffs,)
20 vs.)
21 Jami Snyder, Director of the Arizona)
Health Care Cost Containment System,)
22 in her official capacity,)
23 Defendant.)

No. 4:20-cv-335-SHR
**PLAINTIFFS' RESPONSES AND
OBJECTIONS TO
DEFENDANT'S FIRST SET OF
REQUESTS FOR ADMISSION**

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1 Plaintiffs D.H. and John Doe (“Plaintiffs”), by and through their attorneys and
2 pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and other applicable
3 laws, hereby object and respond to Defendant’s Requests for Admission.

4 Plaintiffs submit these objections and responses (each a “Response”) without
5 conceding the relevancy or materiality of the subject matter of any Request for Admission
6 (each a “Request”). These objections and responses are without Plaintiffs’ right to object to
7 the relevance, admissibility, or use of any information provided in these responses in any
8 subsequent proceeding, hearing, or trial. Plaintiffs respond to these Requests based on their
9 knowledge as of the date below and after a reasonable inquiry. Plaintiffs reserve the right
10 to supplement and amend their Responses. Each Response is offered on behalf of both
11 Plaintiffs D.H. and John Doe, except where specifically noted.

12 GENERAL OBJECTIONS

13 1. Plaintiffs object to the Requests to the extent that they seek to impose
14 obligations upon Plaintiffs beyond those permitted by the Federal Rules of Civil Procedure
15 and Local Rules of the U.S. District Court for the District of Arizona.

16 2. Plaintiffs object to the Requests to the extent that Defendant is attempting to
17 use these Requests to obtain discovery from Plaintiffs. “Requests for admissions are not
18 principally discovery devices . . . and they are not to be treated as substitutes for discovery
19 processes to uncover evidence.” *Merkley v. Maricopa Cty. Cmty. Coll. Dist.*, No. 04-2981-
20 PHX-ROS, 2006 WL 8440535, at *5 (D. Ariz. June 29, 2006) (citing *Safeco of Am. V.*
21 *Rawstron*, 181 F.R.D. 441, 445 (C.D. Cal. 1998)). Plaintiffs will therefore answer each
22 Request in accordance with its obligations under Rule 36.

23 3. Plaintiffs object to the Requests to the extent that they ask Plaintiffs to admit
24 or deny information which is not in their possession, custody, or control. Specifically, many
25 of these Requests seek broad admissions regarding treatment of gender dysphoria or ask
26 Plaintiffs to draw legal conclusions. These Requests are properly the subject of expert
27 discovery or motion practice, not Requests directed to Plaintiffs.
28

1 4. Plaintiffs object to the Requests to the extent that they contain words and
2 phrases that are vague, ambiguous, confusing, overly broad, and/or undefined, and therefore
3 are difficult or impossible to understand.

4 5. Plaintiffs object to the Requests to the extent that they are based on facts not
5 in evidence or facts that are otherwise incorrect.

6 6. Plaintiffs incorporate the foregoing General Objections into the Responses
7 below, regardless of whether a particular Response may repeat a particular General
8 Objection.

9 **REQUEST NO. 1:**

10 Admit that not all natal females with gender dysphoria will seek male chest
11 reconstruction surgery.

12 **RESPONSE TO REQUEST NO. 1:**

13 Plaintiffs object to this Request because it seeks information that is neither relevant
14 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
15 object to this Request because it is properly the subject of expert discovery, not a Request
16 for Admission under Rule 36. To the extent that the term "natal females" is intended to refer
17 to individuals who are assigned female at birth, after reasonable inquiry, the information
18 Plaintiffs know or can readily obtain is insufficient to enable Plaintiffs to admit or deny this
19 Request; Plaintiffs therefore lack knowledge or information sufficient to admit or deny this
20 Request.

21 **REQUEST NO. 2:**

22 Admit that male chest reconstruction surgery is not medically necessary for all natal
23 females with gender dysphoria.

24 **RESPONSE TO REQUEST NO. 2:**

25 Plaintiffs object to this Request because it seeks information that is neither relevant
26 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
27 object to this Request because it is properly the subject of expert discovery, not a Request
28 for Admission under Rule 36. To the extent that the term "natal females" is intended to refer

1 to individuals who are assigned female at birth, after reasonable inquiry, the information
2 Plaintiffs know or can readily obtain is insufficient to enable Plaintiffs to admit or deny this
3 Request; Plaintiffs therefore lack knowledge or information sufficient to admit or deny this
4 Request.

5 **REQUEST NO. 3:**

6 Admit that the determination of whether male chest reconstruction surgery is
7 medically necessary for a natal female with gender dysphoria is a fact-intensive inquiry that
8 must take into account the unique circumstances of each individual. (Complaint ¶ 29).

9 **RESPONSE TO REQUEST NO. 3:**

10 Plaintiffs object to this Request because it seeks information that is neither relevant
11 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
12 object to this Request because it is properly the subject of expert discovery, not a Request
13 for Admission under Rule 36. Plaintiffs further object to this Request because the words
14 and phrases "fact-intensive inquiry" and "unique circumstances" are vague, ambiguous, and
15 not capable of reasonable comprehension. To the extent that the term "natal females" is
16 intended to refer to individuals who are assigned female at birth, Plaintiffs admit what is
17 stated in paragraph 29 of the Complaint:

18 Gender dysphoria is a serious medical condition recognized by the American
19 Psychiatric Association. Am. Psychiatric Ass'n, Diagnostic and Statistical
20 Manual of Mental Disorders (5th ed. 2013) ("DSM-5"). Gender dysphoria
21 refers to the distress that can result from the incongruence between a person's
22 gender identity and their assigned sex. If left untreated, gender dysphoria can
23 cause anxiety, depression, and even self-harm or suicidal ideation. Gender
24 dysphoria is often heightened "when physical interventions by means of
25 hormones and/or surgery are not available." *Id.* at 451. Access to appropriate,
26 individualized medical care can mitigate and often prevent all of those
27 symptoms.

28 Plaintiffs deny the remainder of this Request.

REQUEST NO. 4:

Admit that hormone treatment is one way to alleviate the effects of gender dysphoria.
(Complaint ¶ 29).

RESPONSE TO REQUEST NO. 4:

1 Plaintiffs adopt their Response to Request No. 3 as and for its Response to this
2 Request and further note that the phrase “hormone treatment” is vague, ambiguous, and
3 undefined.

4 **REQUEST NO. 5:**

5 Admit there are no studies that identify the long-term health benefits of male chest
6 reconstruction surgery for individuals under the age of 21 with gender dysphoria.

7 **RESPONSE TO REQUEST NO. 5:**

8 Plaintiffs object to this Request because it seeks information that is neither relevant
9 to any party’s claim or defense nor proportional to the needs of the case. Plaintiffs further
10 object to this Request because it is properly the subject of expert discovery, not a Request
11 for Admission under Rule 36. Plaintiffs further object to this Request because the phrase
12 “long-term health benefits” is vague, ambiguous, and not capable of reasonable
13 comprehension. After reasonable inquiry, and considering the unintelligible nature of this
14 Request, the information Plaintiffs know or can readily obtain is insufficient to enable
15 Plaintiffs to admit or deny this Request; Plaintiffs therefore lack knowledge or information
16 sufficient to admit or deny this Request.

17 **REQUEST NO. 6:**

18 Admit that there are no generally accepted guidelines or tests for medical
19 professionals to apply to determine whether male chest reconstruction surgery is medically
20 necessary for a natal female with gender dysphoria.

21 **RESPONSE TO REQUEST NO. 6:**

22 Plaintiffs object to this Request because it seeks information that is neither relevant
23 to any party’s claim or defense nor proportional to the needs of the case. Plaintiffs further
24 object to this Request because it is properly the subject of expert discovery, not a Request
25 for Admission under Rule 36. Plaintiffs further object to this Request because the phrase
26 “guidelines or tests” is vague, ambiguous, and not capable of reasonable comprehension.
27 To the extent that the term “natal female” is intended to refer to individuals who are assigned
28 female at birth, after reasonable inquiry, and considering the unintelligible nature of this

1 Request, the information Plaintiffs know or can readily obtain is insufficient to enable
2 Plaintiffs to admit or deny this Request; Plaintiffs therefore lack knowledge or information
3 sufficient to admit or deny this Request.

4 **REQUEST NO. 7:**

5 Admit that childhood gender dysphoria more often than not does not persist into
6 adulthood.

7 **RESPONSE TO REQUEST NO. 7:**

8 Plaintiffs object to this Request because it seeks information that is neither relevant
9 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
10 object to this Request because it is properly the subject of expert discovery, not a Request
11 for Admission under Rule 36. After reasonable inquiry, the information Plaintiffs know or
12 can readily obtain is insufficient to enable Plaintiffs to admit or deny this Request; Plaintiffs
13 therefore lack knowledge or information sufficient to admit or deny this Request.

14 **REQUEST NO. 8:**

15 Admit that adolescent gender dysphoria more often than not does not persist into
16 adulthood.

17 **RESPONSE TO REQUEST NO. 8:**

18 Plaintiffs object to this Request because it seeks information that is neither relevant
19 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
20 object to this Request because it is properly the subject of expert discovery, not a Request
21 for Admission under Rule 36. After reasonable inquiry, the information Plaintiffs know or
22 can readily obtain is insufficient to enable Plaintiffs to admit or deny this Request; Plaintiffs
23 therefore lack knowledge or information sufficient to admit or deny this Request.

24 **REQUEST NO. 9:**

25 Admit that some peer-reviewed studies show that childhood gender dysphoria not
26 [sic] does not persist into adulthood in 97% of cases.

27 **RESPONSE TO REQUEST NO. 9:**

28

1 Plaintiffs object to this Request because it seeks information that is neither relevant
2 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
3 object to this Request because it is properly the subject of expert discovery, not a Request
4 for Admission under Rule 36. Plaintiffs further object to this Request because the phrase
5 "does not persist" is vague, ambiguous, and not capable of reasonable comprehension. After
6 reasonable inquiry, and considering the unintelligible nature of this Request, the
7 information Plaintiffs know or can readily obtain is insufficient to enable Plaintiffs to admit
8 or deny this Request; Plaintiffs therefore lack knowledge or information sufficient to admit
9 or deny this Request.

10 **REQUEST NO. 10:**

11 Admit that it is a generally accepted medical fact that the brains of individuals under
12 the age of 21 are still developing.

13 **RESPONSE TO REQUEST NO. 10:**

14 Plaintiffs object to this Request because it seeks information that is neither relevant
15 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
16 object to this Request because it is properly the subject of expert discovery, not a Request
17 for Admission under Rule 36. Plaintiffs further object to this Request because the phrase
18 "still developing" is vague, ambiguous, and not capable of reasonable comprehension. After
19 reasonable inquiry, and considering the unintelligible nature of this Request, the
20 information Plaintiffs know or can readily obtain is insufficient to enable Plaintiffs to admit
21 or deny this Request; Plaintiffs therefore lack knowledge or information sufficient to admit
22 or deny this Request.

23 **REQUEST NO. 11:**

24 Admit that Plaintiff D.H. suffered from "significant psychological distress"
25 including "severe anxiety and suicidal ideation" before D.H. was diagnosed with gender
26 dysphoria. (Complaint ¶¶ 6-7).

27 **RESPONSE TO REQUEST NO. 11:**

28

1 Plaintiffs object to this Request because it seeks information that is neither relevant
2 to any party’s claim or defense nor proportional to the needs of the case. Plaintiffs further
3 object to this Request because it is misleading: that a person may experience significant
4 psychological distress or severe anxiety and suicidal ideation before being formally
5 diagnosed with gender dysphoria does not mean that these symptoms are not caused by
6 gender dysphoria—it simply means that no formal diagnosis has occurred.

7 Plaintiff D.H. further answers that, subject to the foregoing objections, admitted.

8 Plaintiff John Doe further answers that, after reasonable inquiry, the information
9 Plaintiff knows or can readily obtain is insufficient to enable Plaintiff to admit or deny this
10 Request; Plaintiff therefore lacks knowledge or information sufficient to admit or deny this
11 Request.

12 **REQUEST NO. 12:**

13 Admit that no psychiatrist has recommended that Plaintiff D.H. obtain male chest
14 reconstruction surgery. (Complaint ¶ 9).

15 **RESPONSE TO REQUEST NO. 12:**

16 Plaintiffs object to this Request because it seeks information that is neither relevant
17 to any party’s claim or defense nor proportional to the needs of the case. Specifically, it is
18 not relevant whether a “psychiatrist has recommended” that an individual receive male
19 chest reconstruction surgery. Plaintiffs further object to this Request because
20 “recommended” is vague, ambiguous, and not capable of reasonable comprehension,
21 particularly as used in a medical context.

22 Subject to the foregoing objections, Plaintiff D.H. admits that multiple providers
23 have assessed Plaintiff D.H. and found that Plaintiff D.H. meets the criteria for male chest
24 reconstruction surgery. *See, e.g.*, Decl. of Tamar Reed in Support of Plaintiffs’ Mot. for
25 Prelim. Injunction, ¶ 10 (Dkt. 5-2); Decl. of Andrew Cronyn, M.D., in Support of Plaintiffs’
26 Mot. for Prelim. Injunction, ¶ 23 (Dkt. 5-3). *See also* Expert Decl. of Loren S. Schechter,
27 M.D., in Support of Plaintiffs’ Mot. for Prelim. Injunction, ¶ 43 (Dkt. 5-5) (noting “D.H.
28 appears to be a good candidate for male chest reconstruction surgery.”).

1 **REQUEST NO. 13:**

2 Admit that Plaintiff John Doe suffered from “depression and suicidal ideation”
3 before John Doe was diagnosed with gender dysphoria. (Complaint ¶ 10).

4 **RESPONSE TO REQUEST NO. 13:**

5 Plaintiffs object to this Request because it seeks information that is neither relevant
6 to any party’s claim or defense nor proportional to the needs of the case. Plaintiffs further
7 object to this Request because it is misleading: that a person may experience depression and
8 suicidal ideation before being formally diagnosed with gender dysphoria does not mean that
9 these symptoms are not caused by gender dysphoria—it simply means that no formal
10 diagnosis has occurred.

11 Plaintiff John Doe further answers that, subject to the foregoing objections, admitted.

12 Plaintiff D.H. further answers that, after reasonable inquiry, the information Plaintiff
13 knows or can readily obtain is insufficient to enable Plaintiff to admit or deny this Request;
14 Plaintiff therefore lacks knowledge or information sufficient to admit or deny this Request.

15 **REQUEST NO. 14:**

16 Admit that irreversible changes to one’s body can negatively affect one’s quality of
17 life. (Complaint ¶ 27).

18 **RESPONSE TO REQUEST NO. 14:**

19 Plaintiffs object to this request because it is overly broad and because it is vague,
20 ambiguous, and not capable of reasonable comprehension. Plaintiffs further object to this
21 Request because it seeks information that is neither relevant to any party’s claim or defense
22 nor proportional to the needs of the case. Plaintiffs admit what is stated in paragraphs 26-
23 27 of the Complaint:

24 Around the onset of puberty, many transgender youth experience a level of
25 psychological distress that significantly interferes with their overall wellbeing
26 and ability to function. For some transgender youth, that distress becomes
debilitating and can lead to a severe decline in mental health.

27 That distress stems, in part, from the visible physical changes that accompany
28 puberty. Those physical changes undermine a transgender young person’s
ability to live in a manner consistent with their gender identity, exacerbating
their psychological distress. Even basic daily tasks, such as bathing and

1 getting dressed, can become emotionally paralyzing because those tasks are
2 painful reminders of the disconnect between a transgender young person's
3 body and their gender identity. In addition, a transgender boy who has begun
4 to develop breasts is more likely to be mistaken for female, a probability that
5 serves as a constant source of anxiety. The psychological distress transgender
youth experience is further heightened by the reality that some of those
physical changes may be irreversible, permanently constricting their future
treatment options and negatively affecting their quality of life. Consequently,
timely treatment is critical.

6 Plaintiffs deny the remainder of this Request.

7 **REQUEST NO. 15:**

8 Admit that Plaintiffs have no evidence that any transgender male under the age of 21
9 (other than Plaintiff D.H.) has applied for an individual exception to the Challenged
10 Exclusion.

11 **RESPONSE TO REQUEST NO. 15:**

12 Plaintiffs object to this Request because it seeks information that is neither relevant
13 to any party's claim or defense nor proportional to the needs of the case. None of Plaintiffs'
14 claims require them to show Plaintiffs or the class have applied for an "individual exception
15 to the Challenged Exclusion." Plaintiffs further object to the phrase "individual exception"
16 as vague, ambiguous, undefined, and not capable of reasonable comprehension.

17 Plaintiffs also object to this Request because it seeks information which would be in
18 Defendant's possession, custody, or control. Moreover, Rule 36 is not to be used as a
19 discovery device, and the information sought by this Request is subject to a pending Request
20 for Production *from Plaintiffs* to Defendant. *See* Request No. 34, Plaintiffs' First Request
21 for Production.

22 After reasonable inquiry, and considering the unintelligible nature of this Request,
23 the information Plaintiffs know or can readily obtain is insufficient to enable Plaintiffs to
24 admit or deny this Request; Plaintiffs therefore lack knowledge or information sufficient to
25 admit or deny this Request.

26 **REQUEST NO. 16:**

1 Admit that Plaintiffs have no evidence that any transgender male under the age of 21
2 enrolled in AHCCCS (other than Plaintiff D.H.) has appealed a determination that male
3 chest reconstruction surgery is not medically necessary.

4 **RESPONSE TO REQUEST NO. 16:**

5 Plaintiffs adopt their Response to Request No. 15 as their Response to this Request.

6 **REQUEST NO. 17:**

7 Admit that Plaintiffs have no evidence that any transgender male under the age of 21
8 enrolled in AHCCCS (other than Plaintiff D.H.) has appealed a determination that male
9 chest reconstruction surgery is not eligible for payment under the Challenged Exclusion.

10 **RESPONSE TO REQUEST NO. 17:**

11 Plaintiffs adopt their Response to Request No. 15 as and for its Response to this
12 Request.

13 **REQUEST NO. 18:**

14 Admit that no court of law in the United States has determined that male chest
15 reconstruction surgery is medically necessary to treat gender dysphoria in individuals under
16 the age of 21.

17 **RESPONSE TO REQUEST NO. 18:**

18 Plaintiffs object to this Request because it seeks information that is neither relevant
19 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
20 object to this Request because it seeks a legal conclusion, which is not properly the subject
21 of a Request for Admission under Rule 36. After reasonable inquiry, the information
22 Plaintiffs know or can readily obtain is insufficient to enable Plaintiffs to admit or deny this
23 Request; Plaintiffs therefore lack knowledge or information sufficient to admit or deny this
24 Request.

25 **REQUEST NO. 19:**

26 Admit that circumstances unique to Plaintiff John Doe and Plaintiff D.H. make male
27 chest reconstruction surgery medically necessary for them.

28 **RESPONSE TO REQUEST NO. 19:**

1 Plaintiffs object to this Request because it seeks information that is neither relevant
2 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
3 object to this Request because it is properly the subject of expert discovery, not a Request
4 for Admission under Rule 36. Plaintiffs further object to this Request because the phrase
5 "circumstances unique to Plaintiff John Doe and Plaintiff D.H." is vague, ambiguous, and
6 not capable of reasonable comprehension.

7 Subject to the foregoing objections, denied. Plaintiff D.H.'s and Plaintiff John Doe's
8 gender dysphoria and need for surgical treatment are described in paragraph 68-104 of the
9 Complaint. Gender-confirming medical treatments such as male chest reconstruction
10 surgery, however, are not uniquely appropriate just for Plaintiff D.H. and Plaintiff John
11 Doe. In fact, Dr. Andrew Cronyn, co-leader of transgender health care at El Rio Health
12 Center in Tuscon, Arizona, is personally aware of more than forty patients who are
13 transgender boys who receive their health insurance coverage through AHCCCS and need
14 male chest reconstruction surgery. *See* Decl. of Dr. Andrew Cronyn, ¶ 10 (Dkt. 5-3).

15 **REQUEST NO. 20:**

16 Admit that the Challenged Exclusion limits surgical treatment of issues related to the
17 care and treatment of transgender individuals beyond the surgical treatment sought by
18 Plaintiffs.

19 **RESPONSE TO REQUEST NO. 20:**

20 Plaintiffs object to this Request because it seeks information that is neither relevant
21 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
22 object to this Request because it seeks a legal conclusion, which is not properly the subject
23 of a Request for Admission under Rule 36. Plaintiffs further object to this Request because
24 the phrase "surgical treatment of issues related to the care and treatment of transgender
25 individuals" is vague, ambiguous, and not capable of reasonable comprehension. Plaintiffs
26 also object to this Request because it seeks information which would be in Defendant's
27 possession, custody, or control. Moreover, Rule 36 is not to be used as a discovery device.
28 After reasonable inquiry, and considering the unintelligible nature of this Request, the

1 information Plaintiffs know or can readily obtain is insufficient to enable Plaintiff to admit
2 or deny this Request; Plaintiffs therefore lack knowledge or information sufficient to admit
3 or deny this Request.

4 **REQUEST NO. 21:**

5 Admit that it is Plaintiffs' position that if the Court grants the relief requested by
6 Plaintiffs and strikes down the Challenged Exclusion, AHCCCS will have no ability to limit
7 coverage for any gender reassignment surgery deemed medically necessary by a healthcare
8 provider.

9 **RESPONSE TO REQUEST NO. 21:**

10 Plaintiffs object to this Request because it seeks information that is neither relevant
11 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
12 object to this Request because it contains words and phrases which are vague, ambiguous,
13 undefined, and not capable of reasonable comprehension, including to the extent it asks
14 Plaintiffs to interpret the meaning of "no ability to limit coverage." Plaintiffs further object
15 to this Request because it seeks a legal conclusion, which is not properly the subject of a
16 Request for Admission under Rule 36. After reasonable inquiry, and considering the
17 unintelligible nature of this Request, the information Plaintiffs know or can readily obtain
18 is insufficient to enable Plaintiff to admit or deny this Request; Plaintiffs therefore lack
19 knowledge or information sufficient to admit or deny this Request.

20 **REQUEST NO. 22:**

21 Admit that it is Plaintiffs' position that male chest reconstruction surgery is only a
22 small segment of the reassignment surgeries that could be medically necessary for
23 individuals with gender dysphoria.

24 **RESPONSE TO REQUEST NO. 22:**

25 Plaintiffs object to this Request because it seeks information that is neither relevant
26 to any party's claim or defense nor proportional to the needs of the case. Plaintiffs further
27 object to this Request because it contains words and phrases which are vague, ambiguous,
28 undefined, and not capable of reasonable comprehension, including to the extent it asks

1 Plaintiffs to interpret the meaning of “only a small segment of the reassignment surgeries
2 that could be medically necessary.” Plaintiffs further object to this Request because it
3 appears to be the subject of expert discovery, which is not properly the subject of a Request
4 for Admission under Rule 36. After reasonable inquiry, and considering the unintelligible
5 nature of this Request, the information Plaintiffs know or can readily obtain is insufficient
6 to enable Plaintiffs to admit or deny this Request; Plaintiffs therefore lack knowledge or
7 information sufficient to admit or deny this Request.

8 **REQUEST NO. 23:**

9 Admit that AHCCCS is not legally required to provide coverage for any medical
10 treatment that is deemed “experimental.”

11 **RESPONSE TO REQUEST NO. 23:**

12 Plaintiffs object to this Request because it contains words and phrases which are
13 vague, ambiguous, undefined, and not capable of reasonable comprehension, including to
14 the extent it asks Plaintiffs to interpret the meaning of “not legally required to provide
15 coverage” or “experimental.” Plaintiffs further object to this Request because it seeks a legal
16 conclusion, which is not properly the subject of a Request for Admission under Rule 36.
17 After reasonable inquiry, and considering the unintelligible nature of this Request, the
18 information Plaintiffs know or can readily obtain is insufficient to enable Plaintiffs to admit
19 or deny this Request; Plaintiffs therefore lack knowledge or information sufficient to admit
20 or deny this Request.

21 **REQUEST NO. 24:**

22 Admit that nothing in the Medicaid Act expressly requires AHCCCS to provide
23 coverage for gender reassignment surgeries.

24 **RESPONSE TO REQUEST NO. 24:**

25 Denied. The Challenged Exclusion violates Plaintiffs’ civil rights under the Early
26 Periodic Screening, Diagnostic and Treatment requirements of the federal Medicaid Act,
27 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(r); and the
28

1 comparability requirement of the Medicaid Act, *id.* § 1396a(a)(10)(B). *See* Compl. ¶¶ 41-
2 58, 115-118.

3
4 Dated: February 24, 2021

Respectfully submitted,

5
6 /s/ Brent P. Ray

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CERTIFICATE OF SERVICE

I certifies that on February 24, 2021, I caused a copy of the foregoing Plaintiff's Responses and Objections to Defendant's First Set of Interrogatories to be served by email on all counsel of record.

/s/ Andrew J. Chinsky